

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

MISCELLANEOUS DRIVERS AND HELPERS)	
UNION, LOCAL NO. 610)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 75-120
)	
CITY OF ARNOLD, MISSOURI)	
Respondent.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

FINDINGS OF FACT

On October 16, 1975, the Miscellaneous Drivers and Helpers Union, Local No. 610, filed a petition with the State Board of Mediation requesting this Board to make a determination as to the appropriateness of a bargaining unit and majority representative status pursuant to Section 105.525 RSMo. 1969 for the following unit:

All employees of the City of Arnold, Missouri, excluding department heads.

Upon receipt of the petition, the Board scheduled and conducted a pre-hearing conference in this matter in Clayton, Missouri, on November 6, 1975. It was determined at said conference that it would be necessary to conduct a hearing in this case.

On January 12, 1976, a hearing was called to order in this matter at the St. Louis County Courthouse, Clayton, Missouri. The evidence was received by a Board panel consisting of one employer member, one employee member, and the chairman. The Petitioner and the respondent were represented by counsel.

It should be noted that the parties have entered into a Stipulation of Facts which has been attached hereto as part of the decision.

The Board in this case must decide whether:

(1) Three individuals are confidential or supervisory and therefore excluded from the unit.

(2) The individual holding the title of street crew foreman supervisory and therefore excluded from the unit.

(3) Individuals listed under "Manpower" personnel should be excluded from the unit.

There are three secretarial positions which are in dispute in this case.

The first clerical position to be reviewed is that of secretary to the Mayor of the City of Arnold, Missouri. The Mayor functions in a part time capacity, but is directly involved in the decision-making process of the City and furthermore, he participates in personnel policy. His secretary is responsible for all aspects of communication in that office which would include incoming and outgoing correspondence and telephone calls. She has access to and is responsible for the filing system of the Mayor which includes personnel policy. The Mayor's secretary also serves as secretary to the Building Commissioner.

The second clerical position is that of director of the solid waste program. This individual's duties are to implement the solid waste ordinance and program which provides for the collection of solid waste in the city. In performing these duties she works by herself. This same individual also serves as Court Clerk and has the responsibility of preparing the court docket, collecting fines and issuing warrants.

The third clerical position to be considered is that of secretary to the City Administrator. The position of Administrator is full time and includes maintaining the day to day operation of the city, acting as personnel officer and formulating policy for that office, managing grants and working closely with the City Attorney regarding new ordinances and policies. The secretary to the Administrator devotes 80 to 90% of her

time to this position. She is responsible for all filing, correspondence and distribution of documents to the Mayor and members of the council.

II.

The next issue we must address is whether the individual referred to as the street crew foreman should be included in the unit. This individual is responsible for overseeing the general day to day operation of the street crew which consists of twelve men. He makes decisions and purchases in reference to the equipment and materials necessary to perform the work. He does not perform manual labor tasks, but he does drive a truck and wear a uniform like the other crewmen. He makes recommendations as to the hiring and firing of employees and is paid considerably more than the other crew members.

III.

The third issue involves those employees hired under the Manpower program which is a federally funded program wherein the city can select unemployed eligible persons who have qualified for employment with the Manpower office in Hillsboro, Missouri.

There are presently five people working for the city under the Manpower program. One serves as the research assistant and the other four work on the street crew. These employees are on the city payroll and are paid by the city and the city is reimbursed by the federal government through the aforementioned program. The duties of the employees do not differ from those of their fellow employees.

CONCLUSIONS OF LAW

The definition of the term appropriate unit is defined in Section 105.500 (1) RSMo. 1969.

"Appropriate unit" means a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned."

Confidential employees are an exception to those included in the appropriate unit. "Confidential" employees have been defined as those employees who assist and act in a confidential capacity to persons who exercise managerial functions in the field of labor relations. B.F. Goodrich Company, (1956) 115 NLRB 722. It is a well decided fact that secretaries are confidential employees where their duties put them in a position to acquire information pertaining to their employer's labor relation matters. Moore-McCormack Lines, Inc., 1970 C.C.H. NLRB Sec. 21, 693, 181 NLRB. (No. 76).

The Mayor's and the City Administrator's secretaries have access to information and documents relating to the employer's labor relations policy and planning before the information becomes public.

It is the opinion of this Board that the position of the secretary to the Mayor is a confidential position and therefore that particular individual should be excluded from the unit.

It is the opinion of this Board that the secretary to the City Administrator is also a confidential employee and should therefore be excluded from the unit.

The individual who acts in the capacity as a substitute for the Mayor's secretary and also as the solid waste clerk should be included in the unit because there is no evidence that this non-confidential individual substitutes for a confidential employee with any degree of regularity. Furthermore, the evidence does not state that the position of the solid waste clerk is supervisory inasmuch as the individual does not initiate policy or direct the work of any other employees.

II.

The individual designated as the street crew foreman acts in a supervisory capacity and therefore should be excluded from the unit. The foreman is responsible for overseeing the general day to day operation of the street crew. This individual has the "responsibility to direct" employees and does not perform manual labor tasks with the other crew members. The evidence also states that the foreman is paid a considerably higher salary than the other crew workers.

III.

The employees hired under the federally funded Manpower Program share a community of interest with their fellow employees in the fact that they perform the same duties and work under the same conditions, however, these employees are of a temporary nature.

It is the purpose of public employment programs such as the Manpower Program to provide unemployed and underemployed persons with transitional employment in jobs providing needed public services in areas of substantial unemployment and, wherever feasible, related training and manpower services to enable such persons to move into employment or training not supported under this title. (emphasis added). Public Law 93-203 Title II, Sec. 201, (Dec. 28, 1973). The basic concept of the program is to provide temporary employment. An individual may, therefore, be laid off if the necessary federal funds are not forthcoming.

It should also be noted that compensation to any participants under the Title II federal funds is limited to a maximum full time rate of \$10,000 per year, plus the cost of fringe benefits to the extent they do not exceed those paid to workers earning \$10,000 a year. Federal Register, Comprehensive Manpower Program and Grants to Areas of High Unemployment, Vol. 40, No. 101, Sec. 9634, (May 23, 1975).

Temporary employees who are hired on a temporary basis and can be laid off with no expectation of re-employment have no status as employees.

Those individuals who are employed under the federally funded Manpower Program are temporary employees and therefore do not have a community of interest with their fellow workers and should be excluded from the unit.

DECISION

It is the decision of this Board that the Mayor's secretary and the secretary for the City Administrator and the street crew foreman and all individuals presently employed under the federally funded Manpower Program be excluded from an appropriate unit.

This Board defines an appropriate bargaining unit as follows:

All employees of the City of Arnold, Missouri, excluding the Mayor's secretary, the City Administrator's secretary, the street crew foreman, all Manpower employees and all department heads.

Entered this 16 day of April, 1976.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Michael Horn
Michael Horn, Chairman

/s/ Harry R. Scott
Harry R. Scott, Employer Member

/s/ Richard Mantia
Richard Mantia, Employee Member